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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,664	09/27/2001	Axel Bogisch	225/50428	8954

7590 08/29/2003

CROWELL & MORING, L.L.P.  
P.O. Box 14300  
Washington, DC 20044-4300

EXAMINER
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NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/963,664	BOGISCH ET AL.
Examiner	Art Unit	
Milton Nelson, Jr.	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05 June 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-3,5-12 and 16-35 is/are pending in the application.
  - 4a) Of the above claim(s) 6-8,16-25,29,32 and 33 is/are withdrawn from consideration.
- 5) Claim(s) 34 and 35 is/are allowed.
- 6) Claim(s) 1-3,5,10-12,26-28 and 30 is/are rejected.
- 7) Claim(s) 9 and 31 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information referred to in the information disclosure statement filed May 14, 2003 has been considered.

### ***Election/Restrictions***

Newly submitted claim 33 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The inventions are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product as follows:

A method of cooling an occupant of a seat in a vicinity of an upper body of the occupant in an open or closed motor vehicle, comprising the steps of: flowing air from an air distributing device supported in a backrest of a vehicle seat assembly of the motor vehicle from an air outflow opening on at least one of an upper narrow side and a lateral outer narrow side of the backrest to the vicinity of the upper body of the occupant.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 33 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Previously withdrawn claims 6-8, 16-25, 29 and 32 remain withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cremer et al (4685727). Note the air-distributing device (312), fan (317), and heating element (318). See Figure 6.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cremer et al (4685727) in view of Alkire et al (1439681) and Curtis (5785388).

Cremer et al shows all claimed features of the instant invention with the exception of an open motor vehicle and an associated head restraint. Note the air outflow opening at the top of the backrest (see Figure 6), and the air distributing device (312).

Alkire et al conventionally teaches providing a vehicle seat in a vehicle that is an open motor vehicle (see Figure 1).

Curtis conventionally teaches providing a vehicle seat with a head restraint (see Figure 4A).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Cremer et al in view of the teachings of Alkire et al by providing Cremer et al's vehicle seat in an open motor vehicle. Such a modification provides the advantages of Cremer et al's assembly in an open motor vehicle environment.

It would have been further obvious to modify Cremer et al in view of the teachings of Curtis by providing a head restraint (and associated attachment means) for enhanced user support, comfort, and safety.

Claims 26-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cremer et al (4685727) in view of Lush (5626386).

Cremer et al shows all claimed features of the instant invention with the exception of the vehicle assembly (claim 26), and the plurality of vehicle seat assemblies disposed side by side in a row (claim 30). Note the air distributing device (312) and heating element (317).

Lush conventionally teaches providing a vehicle seat in a vehicle assembly wherein the vehicle assembly is a plurality of vehicle seat assemblies disposed side by side in a row (see Figure 1).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Cremer et al in view of the teachings of Lush by providing Cremer et al's vehicle seat in a vehicle assembly and providing the vehicle seat assembly as a plurality of vehicle seat assemblies disposed side by side in a row. Such a modification provides the advantages of Cremer et al's assembly in a vehicle assembly environment and further providing the advantages to multiple users.

#### ***Response to Amendment/Arguments***

Applicant's response filed June 5, 2003 has been fully considered. Applicant's arguments regarding Saito et al are now moot in view of the new grounds of rejection necessitated by Applicant's amendment.

#### ***Allowable Subject Matter***

Claims 9 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 34 and 35 are allowed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

This application contains claims 6-8, 16-25, 29, and 32 which are drawn to an invention nonelected with traverse in Paper No. 7, and claim 33 which has been withdrawn by the Examiner (note above). A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 7033082168.



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn  
August 25, 2003